

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

No. 1:02-CV-109-1 (WLS)

AMERICAN CYANAMID, et al.,

Defendants.

PARTIAL CONSENT DECREE WITH KOCH SULFUR PRODUCTS COMPANY LLC

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	
v.	:	No. 1:02-CV-109-1 (WLS)
	:	
AMERICAN CYANAMID, et al.,	:	
	:	
Defendants.	:	
_____	:	

PARTIAL CONSENT DECREE WITH KOCH SULFUR PRODUCTS COMPANY LLC

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed an amended complaint in this matter pursuant to Sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607 and 9613(g)(2), as amended ("CERCLA"), seeking to recover from Koch Sulfur Products LLC among other defendants, response costs incurred at, or in connection with the release or threatened release of hazardous substances at, the Stoller Chemical Company Site in Pelham, Mitchell County, Georgia ("Site").

B. The Defendant that has entered into this Partial Consent Decree ("Settling Defendant") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States and Settling Defendant agree, and this Court by entering this Partial Consent Decree finds, that this Partial Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the

Parties, and that this Partial Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED,

AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and CERCLA Sections 104(e), 107, and 113(b), 42 U.S.C. §§ 9604(e), 9607 and 9613(b), and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Partial Consent Decree or this Court's jurisdiction to enter and enforce this Partial Consent Decree.

III. PARTIES BOUND

2. This Partial Consent Decree is binding upon the United States, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Partial Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Partial Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Partial Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Partial Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Partial Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Partial Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

h. "Paragraph" shall mean a portion of this Partial Consent Decree identified by an arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and the Settling Defendant.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through the effective date of this Partial Consent Decree, together with the response costs incurred by the United States in litigating the liability of non-settling potentially responsible

parties in *United States v. American Cyanamid, et al.* (1:02-CV-109-1 (WLS)(M.D. Ga.)) after the effective date of this Partial Consent Decree.

k. "Plaintiff" shall mean the United States.

l. "Section" shall mean a portion of this Partial Consent Decree identified by a roman numeral.

m. "Settling Defendant" shall mean Defendant Koch Sulfur Products Company LLC.

n. "Site" shall mean the Stoller Chemical Company Superfund site, encompassing approximately 500 acres, located at 106 Mitchell Street, in Pelham, Mitchell County, Georgia, and depicted more clearly on the map included in Appendix A.

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to the EPA Hazardous Substance Superfund. Within 30 days after entry of this Partial Consent Decree, Settling Defendant shall pay to the EPA Hazardous Substance Superfund \$911,170.00 in reimbursement of Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2002V00299, the EPA Region and Site Spill ID Number 04ZM, and DOJ Case Number 90-11-3-07602. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Middle District of Georgia following lodging of the Partial Consent Decree. Any payments received by the Department of

Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendant shall send notice to EPA and DOJ that payment has been made in accordance with Section XI (Notices and Submissions) and to:

Ms. Paula V. Batchelor
U.S. EPA, Region IV
Waste Management Division
Program Services Branch
61 Forsyth St., S.W.
Atlanta, Georgia 30303

VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

5. Interest on Late Payments. In the event that any payments required by Section V (Reimbursement of Response Costs) or Section VI, Paragraph 6 (Stipulated Penalty), are not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

6. Stipulated Penalty.

a. If any amounts due to EPA under this Partial Consent Decree are not paid by the required date, Settling Defendant shall pay to EPA as a stipulated penalty, in addition to the Interest required by Paragraph 5, \$500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

U.S. Environmental Protection Agency
Region 4
Superfund Accounting
P.O. Box 100142
Atlanta, GA 30384
Attn: Collection Officer in Superfund

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, EPA Region 4 and Site Spill ID Number 04ZM, USAO File Number 2002V00299, and DOJ Case Number 90-11-3-07602. Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letters, shall be sent to EPA and DOJ as provided in Section XI (Notices and Submissions) and to:

Ms. Paula V. Batchelor
U.S. EPA, Region IV
Waste Management Division
Program Services Branch
61 Forsyth St., S.W.
Atlanta, Georgia 30303

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Partial Consent Decree.

7. If the United States brings an action to enforce this Partial Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

8. Payments made under Paragraphs 5-7 shall be in addition to any other remedies or

sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Partial Consent Decree.

9. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Partial Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

10. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 11 (Reservation of Rights by United States), the United States covenants not to sue Settling Defendant to recover Past Response Costs under CERCLA Sections 107(a). Subject to the provisions of Paragraph 12 of this Consent Decree, the United States also covenants not to seek civil penalties from Settling Defendant in connection with the United States' request for information pertaining to this Site issued by EPA on November 11, 2000, pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Past Response Costs to the United States) and Section VI, Paragraphs 5 (Interest on Late Payments) and 6(a) (Stipulated Penalty for Late Payment). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Partial Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

11. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 10 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Partial Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to:

- a. liability for failure of Settling Defendant to meet a requirement of this Partial Consent Decree;
- b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- c. criminal liability;
- d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606; and
- e. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs.

12. Notwithstanding any other provision of this Partial Consent Decree, the United States reserves, and this Partial Consent Decree is without prejudice to, the right to institute judicial or administrative proceedings against the Settling Defendant under CERCLA Section 104(e), 42 U.S.C. § 9604(e), if the United States receives information, other than the information in the possession of the United States on the date that Settling Defendant signs this Partial Consent Decree, which indicates that Settling Defendant knowingly failed to disclose material information in response to the United States' request for information pertaining to this Site issued by EPA on November 11, 2000, pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANT

13. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Partial Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on CERCLA Sections 104(e), 106(b)(2), 107, 111, 112, or 113, 42 U.S.C.

§§ 9604(e), 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

14. Nothing in this Partial Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

15. Nothing in this Partial Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Partial Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

16. The Parties agree, and by entering this Partial Consent Decree this Court finds, that Settling Defendant is entitled, as of the effective date of this Partial Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Partial Consent Decree. The "matters addressed" in this Partial Consent Decree are Past Response Costs.

17. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Partial Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Partial Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Partial Consent Decree.

18. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, enforcement of CERCLA Section 104(e), 42 U.S.C. § 9604(e), or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

X. RETENTION OF RECORDS

19. Until 10 years after the entry of this Partial Consent Decree, Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless

of any corporate retention policy to the contrary.

20. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such records or documents to EPA. Settling Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

21. By signing this Partial Consent Decree, Settling Defendant certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the

possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XI. NOTICES AND SUBMISSIONS

22. Whenever, under the terms of this Partial Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Partial Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-07602)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Elizabeth O'Sullivan, Esq.
Environmental Accountability Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Anita L. Davis
CERCLA Program Services Branch
Waste Management Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

As to Settling Defendant:

Dale A. Guariglia, Esq.
Bryan Cave, L.L.P.
One Metropolitan Square
211 N. Broadway, Suite 3600
St. Louis, MO 63102-2750

XII. RETENTION OF JURISDICTION

23. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Partial Consent Decree.

XIII. INTEGRATION AND APPENDIX

24. This Partial Consent Decree and the appended map of the Site (Appendix "A") constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Partial Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Partial Consent Decree.

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

25. This Partial Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Partial Consent Decree disclose facts or considerations which indicate that this Partial Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Partial Consent Decree without further notice.

26. If for any reason this Court should decline to approve this Partial Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XV. EFFECTIVE DATE

27. The effective date of this Partial Consent Decree shall be the date upon which it is entered by the Court.

XVI. SIGNATORIES/SERVICE

28. Each undersigned representative of the Settling Defendant to this Partial Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Partial Consent Decree and to execute and bind legally such Party to this document.

29. The Settling Defendant hereby agrees not to oppose entry of this Partial Consent Decree by this Court or to challenge any provision of this Partial Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the

Partial Consent Decree.

29. The Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Partial Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

SO ORDERED THIS ____ DAY OF _____, 200_.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Partial Consent Decree in the matter of United States v. American Cyanamid, et al., No. 1:02-CV-109-1 (M.D. Ga.), relating to the Stoller Chemical Company Superfund Site and the alleged liability of Koch Sulfur Products Company LLC at that Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 4-20-05


GREGORY L. SUKYS
Virginia State Bar No. 24293
Senior Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-2068/353-0296(FAX)

THE UNDERSIGNED PARTY enters into this Partial Consent Decree in the matter of United States v. American Cyanamid, et al., No. 1:02-CV-109-1 (M.D. Ga.), relating to the Stoller Chemical Company Superfund Site and the alleged liability of Koch Sulfur Products Company LLC at that Site.

FRANK MAXWELL WOOD
United States Attorney
Middle District of Georgia

H. RANDOLPH ADERHOLD
Georgia Bar No. 005150
Assistant United States Attorney
Cherry St. Galleria, 4th Floor
433 Cherry St.
Macon, GA 31201
Phone: (478) 752-2728
Facsimile: (478) 752-3403

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_____
WINSTON A. SMITH
Director, Waste Management Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

ELIZABETH E. O'SULLIVAN
Georgia State Bar No. 208265
Environmental Accountability Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9696

THE UNDERSIGNED PARTY enters into this Partial Consent Decree in the matter of United States v. American Cyanamid, et al., No. 1:02-CV-109-1 (M.D. Ga.), relating to the Stoller Chemical Company Superfund Site and the alleged liability of Koch Sulfur Products Company LLC at that Site.

FOR DEFENDANT KOCH SULFUR PRODUCTS
COMPANY LLC

Date: April 4, 2005

DAVID DUNCAN
Vice President
Koch Sulfur Products Company LLC

If different from above, the following is the name and address of Settling Defendant's agent for service of process, and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service /Attorney

CHRISTOPHER R. GRAHAM
Senior Counsel
Koch Industries, Inc.
4111 East 37th Street North
Wichita, KS 67220
316-828-7130
316-828-8798 (fax)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

AMERICAN CYANAMID, et al.,

Defendants.

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No. 1:02-CV-109-1 (WLS)

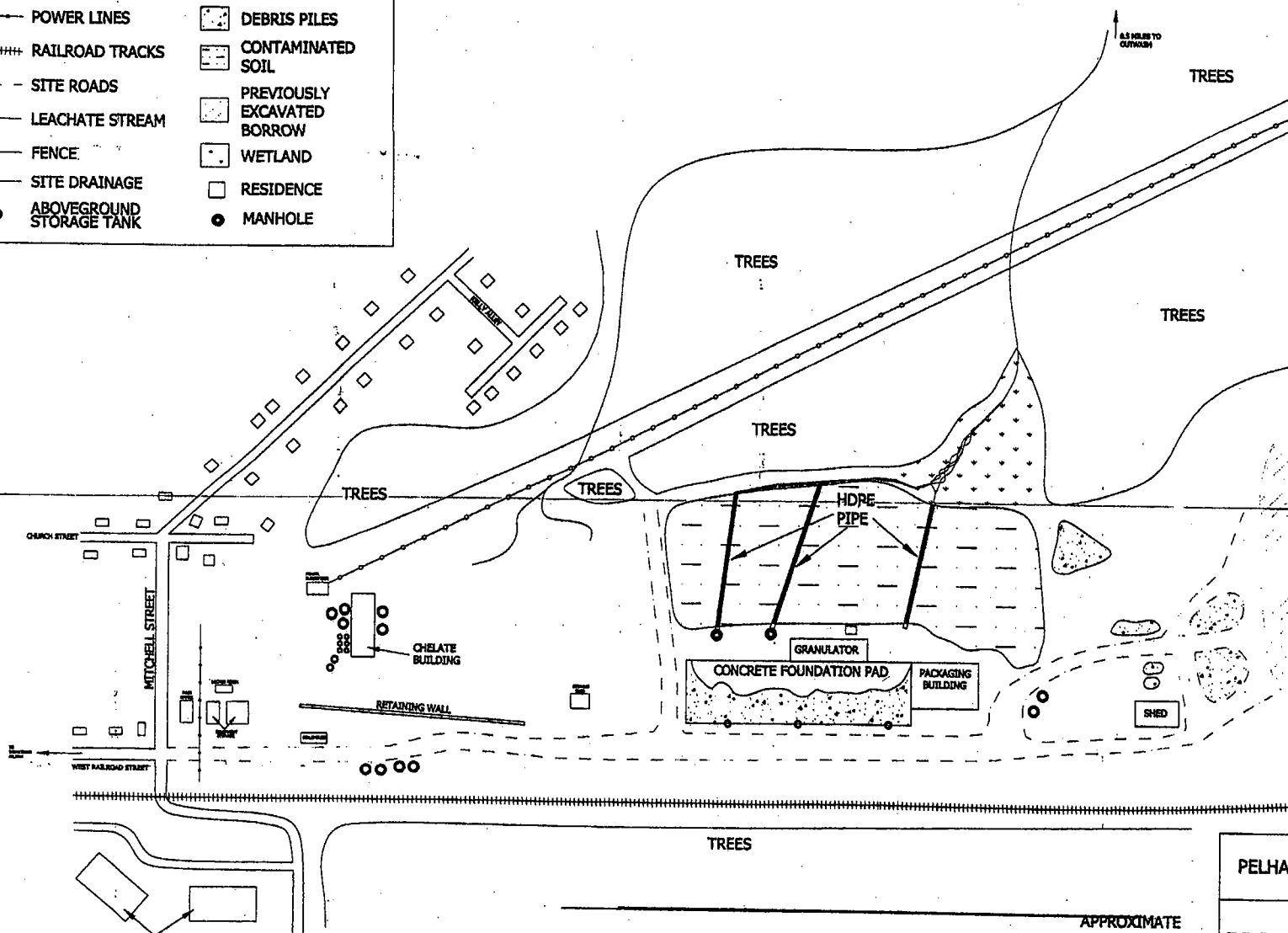
PARTIAL CONSENT DECREE WITH KOCH SULFUR PRODUCTS COMPANY LLC

APPENDIX "A"

MAP OF STOLLER CHEMICAL COMPANY SITE

LEGEND

- | | |
|----------------------------|-------------------------------|
| —●— POWER LINES | ■ DEBRIS PILES |
| ===== RAILROAD TRACKS | ■ CONTAMINATED SOIL |
| - - - SITE ROADS | ■ PREVIOUSLY EXCAVATED BORROW |
| — LEACHATE STREAM | ■ WETLAND |
| — FENCE | □ RESIDENCE |
| — SITE DRAINAGE | ● MANHOLE |
| ○ ABOVEGROUND STORAGE TANK | |



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